

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF MONROE : CRIMINAL TERM

3 -----x

4 THE PEOPLE OF THE STATE OF NEW YORK : INDMT. #2013-0954

5 versus : NYSID #00071860J

6 ANTHONY MILLER, : Robbery 1st

7 Defendant. :

8 -----x HEARINGS

Monroe County  
Hall of Justice  
Rochester, New York  
February 14, 2014

9  
10  
11 B e f o r e :

HONORABLE THOMAS E. MORAN  
Supreme Court Justice

12  
13 A p p e a r a n c e s :

14 SANDRA DOORLEY, ESQ.

District Attorney - Monroe County  
47 South Fitzhugh Street  
Rochester, New York 14614

15  
16 By: DAVID DYS, ESQ.

Assistant District Attorney

17  
18 TIMOTHY P. DONAHER, ESQ.

Public Defender - Monroe County  
10 North Fitzhugh Street  
Rochester, New York 14614

19  
20 By: JOSHUA STUBBE, ESQ.

Assistant Public Defender

21 Defendant present

22  
23 REPORTED BY:

LORI A. P. HEALY, CSR  
Senior Court Reporter

24  
25  
MILLER 000180

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<u>Witness</u>	<u>Attorney</u>	<u>DX</u>	<u>CX</u>	<u>REDX</u>	<u>RECX</u>
Daryl Hogg	Mr. Dys	6			
	Mr. Stubbe		25		
Nolan Wengert	Mr. Dys	33			
	Mr. Stubbe		55		

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MILLER 000182

1 (People's Exhibit 1 - WAS MARKED FOR IDENTIFICATION.)

2 (People's Exhibit 2 - WAS MARKED FOR IDENTIFICATION.)

3 (People's Exhibit 3 - WAS MARKED FOR IDENTIFICATION.)

4 (People's Exhibit 4 - WAS MARKED FOR IDENTIFICATION.)

5 (People's Exhibit 5 - WAS MARKED FOR IDENTIFICATION.)

6 (People's Exhibit 6 - WAS MARKED FOR IDENTIFICATION.)

7 THE COURT: Are you Anthony Miller?

8 THE DEFENDANT: Yes.

9 THE COURT: You appear here today with your  
10 attorney, Mr. Stubbe?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Dys on behalf of the People.  
13 We are here for the purposes of a Huntley and  
14 Wade Hearing.

15 People ready?

16 MR. DYS: Judge, I have -- we are ready.

17 The officer, I am told, is going to be here any  
18 minute.

19 MR. STUBBE: Judge, I was under the impression  
20 this was also for a Probable Cause Hearing.

21 THE COURT: It is.

22 MR. STUBBE: Okay. Thank you.

23 THE COURT: So, you are really not ready?

24 MR. DYS: Your Honor, Officer -- Investigator  
25 Wengert is subpoenaed in County Court. He is here and

HOGG - DIRECT

24

1 Q Once the show-up was complete, what, if anything,  
2 did you do with the defendant?

3 A I walked him back to Officer Watson's car and had  
4 him sit in the back until I heard further information from  
5 Investigator Wengert.

6 Q And what, if anything, did you do regarding the  
7 defendant Anthony Miller in this investigation?

8 A Uhm -- after that, we ended up taking him out of  
9 Officer Watson's car and putting him in my car. Then I  
10 transported him to the Public Safety Building to the fourth  
11 floor, interview room.

12 Q Other than yourself and the defendant, was there  
13 anyone else in your vehicle during that transport?

14 A No, sir.

15 Q Did you interview or speak -- or -- ask the  
16 defendant questions about this investigation during that  
17 transport?

18 A No, sir.

19 Q Did you learn that an interview was later conducted  
20 at the West Side -- or -- you said the West Side?

21 A The Public Safety Building.

22 Q The Public Safety Building.

23 Did you play any role in that interview?

24 A No.

25 Q During the transporting that you did of the

MILLER 000203

HOGG - DIRECT

25

1 defendant, did you ever make any promises or threats to him in  
2 an effort to get him to speak with you or any other officers?

3 A No. No.

4 Q Did there ever come a time that he ever indicated he  
5 wanted an attorney or a lawyer?

6 A No.

7 MR. DYS: If I could have just a moment, your  
8 Honor.

9 THE COURT: Certainly.

10 (A pause in the proceedings.)

11 MR. DYS: Officer, thank you, sir.

12 That's the questions I have.

13 THE WITNESS: Thank you, sir.

14 THE COURT: Mr. Stubbe?

15 MR. STUBBE: Judge.

16 CROSS EXAMINATION

17 BY MR. STUBBE:

18 Q When you arrived on Bradburn Street and saw these  
19 two individuals, did you call your location in to -- over the  
20 air in some manner?

21 A Yes.

22 Q Okay; and how would you have done that?

23 A My car number, 5323, and I would have said, 5323  
24 stepping out with two individuals. I don't recall the exact  
25 location, but I would imagine it would have been Bradburn and

MILLER 000204

WENGERT - DIRECT

41

1 you recall it?

2 A The visibility was good, but it was a very windy,  
3 cold and damp evening.

4 Q And did you make any observations or notations of  
5 the defendant's clothing in relation to the weather  
6 conditions?

7 A Yes, I did. I thought it was bizarre that, number  
8 one, the boots were unlaced. Also, the jacket was unzipped,  
9 given the weather and the story he told me about where he was  
10 coming from and where he was going to.

11 Q And what, in sum and substance, did he tell you when  
12 you spoke to him at Genesee and West High Terrace?

13 A In sum and substance, he explained that he had  
14 walked from his home, which was at 607 Birr Street, all the  
15 way down to his friend's home, Mr. Hines' home, at 31  
16 Bradburn, but they hung out outside the house the entire time,  
17 never going in. Then they went over to 22 Bradburn Street to  
18 attempt to retrieve a cell phone. I know that Birr Street is  
19 quite a distance from Bradburn Street. I later used a Google  
20 map to calculate about an hour and a half walk each way,  
21 which, given the fact that his boots weren't laced, would  
22 suggest that his story wasn't a hundred percent accurate.

23 Q Now, you stated -- strike that.

24 Did there come a time that show-up identification  
25 procedures were conducted?

MILLER 000220

WENGERT - DIRECT

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1 A Yes.

2 Q And that was with whom, which particular witness?

3 A It was with both. It was with Mr. Moseley with  
4 Mr. Hines and Mr. Miller.

5 Q And where was the show-up conducted in relation to  
6 where the alleged crime took place?

7 A At the exact scene of the crime.

8 Q Approximately how much time had elapsed between the  
9 alleged incident and when the show-ups were conducted?

10 A Approximately -- it was less than an hour. It was  
11 approximately fifty minutes.

12 Q And what were your responsibilities during the  
13 show-up procedures?

14 A I was with Mr. Moseley. So, I was to give him  
15 directions, instructions, record his responses.

16 Q And where were the two of you when that was done?

17 A We were in my unmarked patrol vehicle. He was  
18 sitting in the back of my vehicle. There's no cage or  
19 anything in it, and he had a clear, unobstructed view through  
20 the middle of the seats out of the front windshield.

21 Q Now, where were you when this was done in relation  
22 to Genesee Street as you were on Roslyn?

23 A We were west of Genesee Street, about two houses in.

24 Q And when the -- how many individuals were ultimately  
25 displayed to Mr. Moseley?

MILLER 000221



WENGERT - DIRECT

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1 A Two.

2 Q And would you have looked westbound or eastbound to  
3 make those observations?

4 A Eastbound.

5 Q So, you are facing Genesee Street?

6 A Correct.

7 Q Describe the manner -- well, strike that.

8 The two individuals shown were Mr. Hines and the  
9 defendant, correct?

10 A Correct.

11 Q And what was the order?

12 A In that order, Mr. Hines first, followed by  
13 Mr. Miller.

14 Q And were the procedures that were used to display  
15 both individuals, were those the same procedures?

16 A Yes, they were.

17 Q Okay. Describe how the show-up with the defendant  
18 was conducted?

19 A The victim and I were in my car on the south side of  
20 Roslyn Street facing eastbound. When the crime occurred, the  
21 victim was seated on a brick front porch of 19 Roslyn Street.  
22 I was in communication with Officer Hogg via the scene channel  
23 again. Once we were set up and ready to go, I gave  
24 Mr. Moseley instructions. I said, I'd like to show him two  
25 people that may or may not have been involved in any of the

MILLER 000222

WENGERT - DIRECT

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1 crime, and I'd like him to tell me if he recognized them, and  
2 if, indeed, he did recognize them, where he recognized them  
3 from.

4 I then had Officer Hogg first walk Mr. Hines  
5 unhandcuffed to approximately twenty feet of the brick  
6 staircase where the crime had occurred. Mr. Moseley viewed  
7 him, identified him as the individual he had seen in the area  
8 on the bike. We then repeated this procedure with Mr. Miller.  
9 Officer Hogg escorted him over unhandcuffed to about twenty  
10 feet of the porch. Mr. Moseley viewed him and says, that's  
11 him, he just changed his clothes.

12 Q Okay. So, there was not an additional set of  
13 instructions between when Mr. Hines and then the defendant  
14 were shown to him?

15 A No, just that one set of instructions.

16 Q And you stated the approximate distance between  
17 where Mr. Moseley was in the procedure and the persons in the  
18 show-up was how -- how -- how far?

19 A It was about twenty feet.

20 Q Describe the lighting condition?

21 A It was a fairly well lit area. There are street  
22 lights present on the street. There -- there is also a  
23 business across the street, which shines extra light across  
24 the intersection.

25 Q Did you yourself have any difficulty seeing what was

MILLER 000223

WENGERT - DIRECT

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1 going on?

2 A No, I did not.

3 Q What, if any, police cars or other vehicles were in  
4 the area during the show-up?

5 A There was no police cars in the area on the street  
6 at all. I had moved them out prior to the show-up procedures.

7 Q Were any spot lights or other illumination used  
8 during this procedure on the suspects?

9 A No.

10 Q Do you recall whether or not the defendant Anthony  
11 Miller was handcuffed during the show-up procedure?

12 A He was not handcuffed.

13 Q And he was with -- fair to say the defendant was  
14 escorted by a police officer; is that correct?

15 A Yes, he was.

16 Q And who was that?

17 A It was just Officer Hogg. He was about ten feet  
18 away from him.

19 Q So, there was just one officer?

20 A Correct.

21 Q And was he uniformed or plain clothes?

22 A He was uniformed.

23 Q Was the doors to your -- doors and windows for your  
24 car, were they opened or closed?

25 A The doors are closed and the windows were closed.

MILLER 000224

WENGERT - CROSS

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1 Street.

2 Q Sorry for that, but you knew that they had stepped  
3 out already?

4 A Yes.

5 Q And when you approached Mr. Moseley, had -- were  
6 there other officers around?

7 A There was officers on the scene before I had  
8 arrived, and they just gave a -- a brief conversation with  
9 him, just enough to broadcast the information, because I  
10 believe it was Officer Klein was the first officer on scene,  
11 if I recall correctly.

12 Q And had you been following closely enough to know  
13 exactly what description had been broadcast?

14 A Specifically, I recall the broadcast. It was a male  
15 black in a gray hoodie. Then I arrived and I got more  
16 detailed information.

17 Q Okay; and no other officers had broadcast any  
18 further description until you arrived?

19 A They may have. I don't specifically recall.

20 Q To your recollection, do you remember hearing chin  
21 strap beard ever broadcast before you arrived?

22 A No, not before I relayed that information.

23 Q Now, again, you -- you don't know which officer  
24 actually broadcast the first description or called in the  
25 first description?

MILLER 000236

WENGERT - CROSS

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1 A No, I don't.

2 Q Now, looking at the size of the two people that  
3 ultimately did show-up identification procedures with the  
4 first being Aaron Hines, can you describe, again, his physical  
5 characteristics?

6 A He was about six four and heavy build.

7 Q Okay; and Mr. Miller, how would you describe him?

8 A About seven five with a thin to medium build.

9 Q Now, you've stated, when looking at the pictures  
10 marked 3 -- People's Exhibits 3 through 6 that have been  
11 entered into evidence, that the clothing that Mr. Miller was  
12 wearing was oversized; is that right?

13 A Specifically the pants, yes.

14 Q Okay. Is it common for younger black men in the  
15 Bradburn Street area to wear oversized pants?

16 A Yes, it is.

17 Q So, these weren't so oversized that they were  
18 different than what is common for most young black males?

19 MR. DYS: Objection, Judge.

20 A I would say slightly --

21 MR. DYS: Objection.

22 THE COURT: Grounds?

23 MR. DYS: Relevance.

24 THE COURT: Overruled.

25 Q You can answer.

MILLER 000237

WENGERT - CROSS

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1 A In my opinion, they were slightly more oversized  
2 than would be the fashionable style in that area.

3 Q There were other pants on underneath those; is that  
4 right?

5 A I believe so, or, shorts.

6 Q Okay; and is that, again, common of this style of  
7 clothing worn by young black males in that area generally?

8 A I would say so.

9 Q And you've repeated that one of the identifying  
10 characteristics was that he had Timberland boots that were  
11 unlaced. Again, is that not something that's characteristic  
12 of young black males in that area?

13 A Well, the observations were the -- from the victim  
14 were the tan Timberland boots. The victim said nothing about  
15 them being unlaced. I observed they were unlaced.

16 Q Exactly; but that's, again, a common manner of  
17 wearing Timberland boots in that area; is that right?

18 A No, I don't believe so. It's not -- not to walk  
19 around with tan Timberland boots unlaced.

20 Q What about Timberland boots other than tan?

21 A Yes -- well, people wear Timberland boots commonly,  
22 but I have never seen anyone just walking around with -- with  
23 the boots unlaced.

24 Q Now, moving forward a little bit to the  
25 identification procedures, you said that you first did the

MILLER 000238



WENGERT - CROSS

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1 procedure with Mr. Hines, right?

2 A Correct.

3 Q Upon the completion of that, how much time elapsed  
4 before Mr. Miller was brought out?

5 A Approximately a minute to a minute and a half.

6 Q And you said that no other vehicles were around  
7 other than your unmarked police vehicle at that time?

8 A That's correct.

9 Q Where was -- where were they being brought from?

10 A They were being walked up the sidewalk, the west  
11 sidewalk, of Genesee Street from West High Terrace,  
12 approximately half a block to three-quarters of a block south  
13 of that intersection.

14 Q And both of those -- both people were produced with  
15 Officer Hogg following behind them?

16 A About ten feet off to their side.

17 Q And your car is not equipped with a spot light?

18 A No, it is not.

19 Q And when -- sorry.

20 When -- when he made the identification, do you  
21 remember the exact words he used when he identified  
22 Mr. Miller?

23 A To my recollection, it was, that's him, he just  
24 changed clothes. I can give you the precise words if I can  
25 review my narrative.

MILLER 000239